

8950

RECORDATION NO. .... Filed &amp; Recorded

Herbert B. Kregel  
General Counsel

BURLINGTON NORTHERN AUG 29 1977-10 20 AM

INTERSTATE COMMERCE COMMISSION  
7-241A066Frank S. Farrell  
Vice President-LawAUG 29 1977  
Date .....  
Fee \$ 50Curtis H. Berg  
Sr. Associate General Counsel  
—Commerce  
James R. Walker  
John C. Smith  
Reginald Ames  
Louis A. Harris  
Associate General Counsel  
Harold K. Bradford, Jr.  
Richard V. Wicks  
Byron D. Olsen  
Richard M. Gleason  
Barry McGrath  
Robert L. Bartholic  
Assistant General CounselDonald C. Knickerbocker  
George A. Morrison  
Assistant General Counsel—TaxesPeter M. Lee  
William R. Power  
James W. Becker  
Nicholas P. Moros  
Thomas W. Spence  
Ralph S. Nelson  
AttorneysOffice of the Secretary CC Washington, D. C. August 25, 1977  
Interstate Commerce Commission  
Washington, D.C. 20423

Gentlemen:

Enclosed for filing pursuant to Section 20c of the Interstate Commerce Act are the counterparts of Equipment Lease Agreement No. 3500246 between Wells Fargo Leasing Corporation and Burlington Northern Inc. dated as of August 3, 1977.

The names and addresses of the parties to the Lease Agreement are as follows:

Wells Fargo Leasing Corporation, Lessor, 425  
California Street, San Francisco, California 94104

Burlington Northern Inc., Lessee, 176 East Fifth  
Street, St. Paul, Minnesota 55101

A general description of the equipment covered by the enclosed Equipment Lease Agreement is as follows:

Certain maintenance-of-way equipment including

7	Electromatic Production Tampers
6	Combination Ballast Regulators & Brooms
2	Electromatic Production Tampers
3	Servochief Production Tampers
2	Jackson 2300 Switch Tampers
2	Kershaw Comb Ballast Regulators
2	Tamper Comb Ballast Regulators
2	Gallion Cranes
2	RMC Auto Spikers
2	Nordberg Hydo Spikers
1	Fairmont Auto Spiker
1	Fairmont Tie Remover
2	Sets of B & B Equipment
6	Dual Spike Drivers with Compressor
2	Racine Rail Anchor Machines

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AUG 29 10 22 AM '77  
I.C.C.  
FEE OPERATION BR.

Office of the Secretary  
August 25, 1977  
Page 2

Also enclosed is a check in the amount of 50.00 payable to you as Secretary of the Commission covering the cost of the recording.

Please stamp two counterparts with the recordation data of the Commission and return them to the bearer of this letter, Mrs. Carolyn H. K-nkel, 523 Pennsylvania Building, 425 - 13th Street, N.W., Washington, D.C. 20004.

Very truly yours,

  
James W. Becker

JWB:ed

Enc.

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**8/29/77**

**OFFICE OF THE SECRETARY**

**James W. Becker**  
**Burlington Northern, Inc.**  
**176 East Fifth Street**  
**St. Paul, Minnesota 55101**

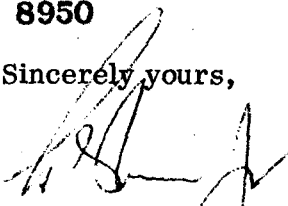
**Dear Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on **8/29/77** at **10:30am** ,

and assigned recordation number(s) **8950**

Sincerely yours,



**H.G. Homme, Jr.**  
**Acting Secretary**

**Enclosure(s)**

8950  
RECORDATION NO. .... Filed & Recorded

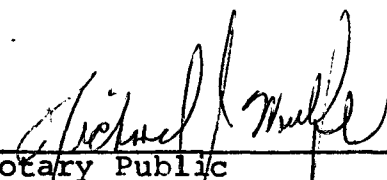
CERTIFICATE

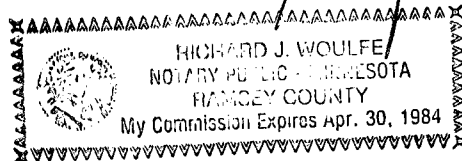
AUG 29 1977 - 10 30 AM

INTERSTATE COMMERCE COMMISSION

I, Richard J. Woulfe, do hereby certify that I am a Notary Public and that I have compared the attached copy of the Equipment Lease Agreement No. 3500246 between Wells Fargo Leasing Corporation and Burlington Northern Inc. dated as of August 3, 1977 to the original Equipment Lease Agreement and find that it is a true and complete copy in all respects.

Dated: August 24, 1977

  
\_\_\_\_\_  
Notary Public





# WELLS FARGO LEASING CORPORATION

425 CALIFORNIA STREET, SAN FRANCISCO, CALIFORNIA 94104

RECORDATION NO. .... Filed & Recorded

AUG 29 1977-10 20 AM

## EQUIPMENT LEASE AGREEMENT

Lease No. 3500246

INTERSTATE COMMERCE COMMISSION

THIS EQUIPMENT LEASE AGREEMENT ("Lease"), made this 3rd day of August, 1977, by and between WELLS FARGO LEASING CORPORATION, a California corporation ("Lessor"), and BURLINGTON NORTHERN INC., a Delaware corporation ("Lessee"):

### WITNESSETH:

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **LEASE.** Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to hire from Lessor the unit or units of equipment, machinery or other property (hereinafter called "Equipment" or "unit or units of Equipment") described in the Equipment Lease Schedule(s) attached hereto and made a part hereof or which may be executed by the parties hereafter with reference hereto (hereinafter called the "Schedule" or "Schedules").

2. **TERM.** The term of this Lease with respect to each unit of Equipment shall be as shown on the applicable Schedule and shall commence on the date Lessor confirms Lessee's purchase order for the Equipment to the seller thereof, or at the time the Equipment is placed on board a carrier for shipment to Lessee, whichever first occurs, so that at all times the risk of loss, damage or destruction to any unit of Equipment shall be borne by Lessee and not by Lessor.

3. **RENT.** The rent for each unit of Equipment shall be the amount stated in the applicable Schedule. In the event Lessee shall be in default of the payment of any sum of money to be paid under this Lease, Lessee shall pay to Lessor a late charge equal to one percent (1%) of such unpaid sum plus interest thereon from the due date thereof (without regard to any grace period) to date of payment at the rate of ten percent (10%) per annum, or such lesser amount as may represent the maximum permitted by applicable law. Lessee shall pay Lessor rent, without deduction or offset, in the amounts and at the time set forth in the Schedule. Rent shall be payable at the office of Lessor set forth below, or at such other place or to such other person as Lessor may from time to time designate in writing.

4. **LESSEE'S INSPECTION.** Upon delivery, Lessee shall make all necessary inspections and tests of the Equipment in order to determine whether the Equipment conforms to specifications and is in good condition and repair. Lessee shall promptly notify Lessor in writing of any defect or other proper objection to the type or condition of the Equipment. If Lessee fails to notify Lessor in writing of any such defect or objection within ten (10) days after delivery of the Equipment to Lessee, then it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has fully inspected the Equipment and that Lessee is satisfied with and has accepted the Equipment in such good condition and repair for all purposes of this Lease. If the Equipment is in good condition and repair, on or before expiration of said ten (10) day period, and in all events prior to placing the Equipment in service, Lessee shall execute and deliver to Lessor a Certificate of Acceptance, in form and substance satisfactory to Lessor.

5. **USE.** Lessee shall use the Equipment carefully and shall comply with all laws, ordinances or regulations relating to the use, operation or maintenance of the Equipment. Lessee shall put the Equipment only to the use contemplated by the manufacturer. Lessee shall affix to the Equipment and maintain thereon such labels, plates, or decals as may be provided by Lessor, or conspicuously mark said Equipment with such language as Lessor may reasonably request, to the effect that such Equipment is owned by Lessor.

6. **ALTERATIONS.** Without the prior written consent of Lessor, Lessee shall not make any alterations, additions or improvements to the Equipment. All alterations, additions and improvements of whatsoever kind or nature made to the Equipment shall become the property of Lessor upon expiration or earlier termination of this Lease. The Equipment shall be permanently located at the place described in the Schedule and shall not be moved from such location without the prior written consent of Lessor.

7. **REPAIRS.** Lessee, at its sole cost and expense, shall keep and maintain each unit of Equipment in good operating order and repair (and, if a vehicle, in roadworthy condition) and shall keep the Equipment protected from the elements except during use in the normal manner. \*ordinary wear and tear excepted,

8. **LESSOR'S INSPECTION.** Lessor shall at any time during normal business hours have the right to enter the premises where the Equipment may be located for the purpose of inspecting and examining the Equipment to insure compliance by Lessee with its obligations under this Lease.

9. **LICENSING, REGISTRATION AND TAXES.** Lessee shall obtain such licensing and registration of the Equipment as is required by federal, state and local law or regulation. As additional rent, Lessee shall pay and discharge when due, all license and registration fees, assessments, sales, use, property and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest applicable thereto, now or hereafter imposed by any state, federal or local government upon any item of the Equipment, or the rentals payable hereunder, whether the same be payable by or assessed to Lessor or Lessee; provided, however, if under local law or custom such payments may be made only by Lessor, Lessee shall promptly notify Lessor and shall reimburse Lessor, upon demand, for all payments thereof made by Lessor. If by law any

such registration or license fee or tax is billed to Lessor, Lessee at its expense will do any and all things required to be done by Lessor in connection with the licensing or registration procedure and the levy or assessment of any tax, including the billing or payment thereof. Upon request, Lessee shall provide Lessor with proof of payment.

10. **INSURANCE.** Lessee, at its sole cost and expense, shall procure and maintain and pay for insurance in respect of each Unit of Equipment and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it. All such insurance shall be in form and amount and with companies satisfactory to Lessor and shall name Lessor as additional insured. Lessee shall deliver the policies of insurance or duplicates thereof or certificates of insurance to Lessor. Each insurer shall agree by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor that it will give Lessor thirty (30) days' written notice before the policy in question shall be materially altered or cancelled. The proceeds of such insurance, at the option of Lessor, shall be applied (a) toward the replacement, restoration or repair of the Equipment, or (b) toward payment of the obligations of Lessee hereunder. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for, loss or damage under any such insurance policy.

11. **LESSOR'S PAYMENT.** In the event Lessee fails to pay any fees, assessments, charges, or taxes, as required herein, Lessor shall have the right, but not be obligated to pay said fees, assessments, charges and taxes, as the case may be. In that event, Lessee shall reimburse Lessor for the cost thereof upon demand and failure to repay the same shall constitute an Event of Default hereunder.

12. **LOSS AND DAMAGE.** Lessee hereby assumes and shall bear the entire risk of loss, damage to, theft, or destruction of the Equipment for any cause whatsoever ("Loss or Damage") including, without limitation, economic loss through extraordinary or premature wear, or requisition of the Equipment by any government agency whether or not such Loss or Damage is covered by insurance. No such Loss or Damage shall relieve Lessee of any of its obligations under this Lease. Lessee shall immediately notify Lessor of any accident or event of loss involving the Equipment.

In the event of Loss or Damage to any unit of Equipment, Lessee, in the event of Damage, shall repair or restore the Equipment to good repair, condition and working order; or in the event of Loss, Lessee shall at the option of Lessor (a) replace the Equipment with similar equipment in good repair, condition and working order; or, (b) pay Lessor in cash the "Stipulated Loss Value" for such unit as set forth in the Stipulated Loss Value Schedule attached hereto or to the Equipment Lease Schedule. Upon payment of the Stipulated Loss Value, this Lease shall terminate only with respect to the unit of Equipment for which Lessee has so paid, and Lessee shall become entitled to said unit As-Is, Where-Is without any warranty, express or implied, with respect to any matter whatsoever.

13. **SURRENDER.** Upon expiration or earlier termination of this Lease with respect to each unit of Equipment, unless upon request by Lessor Lessee has paid Lessor in cash the Stipulated Loss Value for such unit, Lessee shall return each unit of Equipment to Lessor, as may be specified by Lessor, free of all advertising or insignia placed thereon by Lessee, and in good condition, repair and working order, ordinary wear and tear resulting from proper use thereof excepted, in the following manner: (a) by delivering the Equipment at Lessee's sole cost and expense to any location selected by Lessor within the county in which the Equipment was delivered to Lessee, or within the county to which the Equipment was moved with Lessor's consent; or (b) by loading the Equipment on board any carrier designated by Lessor and shipping the same, freight collect, to the destination selected by Lessor.

14. **WARRANTIES.** LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER CONCERNING THE EQUIPMENT. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR FOR ANY LOSS, DAMAGE OR EXPENSE CAUSED BY THE EQUIPMENT OR BY ANY DEFECT THEREIN, USE OR MAINTENANCE THEREOF, OR SERVICING OR ADJUSTMENT THERETO AND, AS TO LESSOR, LEASES THE EQUIPMENT AS-IS. Lessee acknowledges that Lessor is not a dealer in equipment of any kind, and that each unit of Equipment subject to this Lease is of a type, size, design and capacity selected solely by Lessee. If the Equipment is not properly installed, does not operate as

represented or warranted by the manufacturer thereof, or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against the manufacturer or seller and no such occurrence shall relieve Lessee of any of its obligations hereunder. During the term of this Lease with respect to any unit of Equipment in which Lessee renders faithful performance of its obligations, Lessor hereby assigns to Lessee any factory or dealer warranty, whether express or implied, on such unit. All claims or actions on any warranty so assigned shall be made or prosecuted by Lessee, at its sole expense, and Lessor shall have no obligation whatsoever to make any claim on such warranty. Any recovery in cash or cash equivalent under such warranty shall be made payable jointly to Lessee and Lessor. At Lessor's option, all cash proceeds or equivalent thereof from such warranty recovery shall be used to repair or replace the Equipment.

**15. LESSEE'S REPRESENTATIONS.** Lessee represents, warrants and agrees that it (a) has the full power, authority and legal right to enter into and perform the Lease and the execution, delivery and performance of the Lease have been duly authorized by all necessary corporate or other legal action on the part of Lessee, will not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of Lessee, and will not contravene any law, governmental rule, regulation or order binding on Lessee (or the Certificate of Incorporation or By-Laws of Lessee if it is a corporation) or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of Lessee under any indenture, mortgage, contract or other agreement to which Lessee is a party, or by which its subsidiaries may be bound or affected; and (b) all consents and approvals of, the giving of notice to, registration with, and the taking of any other action in respect of any federal, state or foreign governmental authority or agency, necessary, if at all, to permit the transactions contemplated by this Lease have been taken; and (c) the Lease constitutes a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with the terms thereof; and (d) there are no pending or threatened actions or proceedings before any court or administrative agency which if determined adversely will materially affect the condition, business or operations of Lessee or any of its subsidiaries or the ability of Lessee to perform its obligations under this Lease; and (e) that upon timely filing of the appropriate financing statement(s) and filing of the Lease under Section 20(c) of the Interstate Commerce Act, the transactions contemplated by this Lease will raise no presumption of fraud as against and will be effective against all creditors of Lessee under applicable state and federal laws, including without limitation, laws relating to fraudulent conveyances or bulk transfers; and (f) shall provide Lessor, upon request, with an opinion of counsel satisfactory to Lessor with respect to the foregoing matters.

**16. INDEMNITY.** Lessee shall indemnify Lessor against, and hold Lessor harmless from any and all claims, actions, damages, including reasonable attorneys' fees, obligations, liabilities and liens (including any of the foregoing arising or imposed without Lessor's fault or negligence, or in connection with latent or other defects, or any claim for patent, trademark or copyright infringement or under the doctrine of "strict liability"), imposed or incurred by or asserted against Lessor or its successors or assigns, arising out of the manufacture, purchase, lease, possession, operation, condition, return or use of the Equipment, or by operation of law. Lessee shall give Lessor prompt written notice of any matter hereby indemnified against and agrees that upon written notice by Lessor of the assertion of such a claim, action, damage, obligation, liability or lien, Lessee shall assume full responsibility for the defense thereof. This section shall survive termination of this Lease.

**17. INDEMNITY FOR LOSS OF INVESTMENT TAX CREDIT AND DEPRECIATION DEDUCTIONS.** Lessee agrees that if Lessor shall not be entitled to a 10.0% investment tax credit based on 100% of the Original Cost as defined herein to Lessor of the Equipment, or shall not be entitled to the most accelerated method of depreciation permitted under Section 167(b) of the Internal Revenue Code of 1954, as amended, or such credits or deductions are lost, disallowed, eliminated, reduced, recaptured or otherwise unavailable (the "Loss"), because the Equipment does not constitute new Section 38 property in the hands of Lessor, or does not have a useful life in excess of 8-3/4 years or as a result of Lessee's acts or failure to act then Lessee shall pay to Lessor, within thirty (30) days after the date of such loss (as defined herein), an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such sum under the laws of any federal, state or local government or taxing authority, shall be equal to the amount of such credits or deductions so lost plus the amount of interest or penalties (including additions to tax because of underpayment of estimated tax) which may be payable to any federal, state or local government or taxing authority in connection with such loss. The amount of such loss shall be determined by mutual agreement of Lessor and Lessee or, failing such agreement, by an independent firm of certified public accountants or independent tax counsel, at Lessee's expense.

For the purposes of this Lease, the date of any such loss shall be the earliest of (i) the occurrence of an event of Loss as set forth herein or (ii) the payment by Lessor (or the consolidated federal taxpayer group of which Lessor is a part) to the Internal Revenue Service of the tax increase resulting from such loss, or (iii) receipt by Lessor from the appropriate taxing authority of any notice of proposed deficiency, statutory notice of deficiency or assessment relating to the loss or (iv) a determination by an independent firm of certified public accountants or independent tax counsel to the effect that Lessor (or the consolidated federal taxpayer group of which Lessor is a part) is not entitled to such credit or deduction or (v) the adjustment of the tax return of Lessor (or the consolidated federal taxpayer group of which Lessor is a part) to reflect such loss. Lessee shall not be required to pay the foregoing amounts if the loss results from the occurrence of any of the following events: (i) a disqualifying disposition due to sale of any unit or the lease thereof by Lessor prior to any default by Lessee, or (ii) a failure of Lessor to timely claim investment tax credit or depreciation for any unit in the appropriate tax return of Lessor (or the consolidated federal taxpayer group of which Lessor is a part), or (iii) a disqualifying change in the nature of Lessor's business or liquidation thereof, or (iv) if the loss results solely from the failure of the consolidated Federal taxpayer group of which Lessor is a part to have (a) sufficient liability for Federal income tax against which to apply the investment tax credit within the period for which the investment tax credit may be claimed or (b) sufficient gross income against which to apply depreciation deductions.

Lessee at its own expense may contest in good faith any loss arising hereunder, and Lessor agrees to cooperate in connection therewith.

**18. EVENTS OF DEFAULT.** The occurrence of any of the following <sup>material</sup> events shall constitute a default by Lessee ("Event of Default") in the performance of Lessee's obligations hereunder: (a) failure of Lessee to pay when due any rent or other amounts required herein to be paid to Lessor or to timely perform any covenant, condition or obligation required to be performed by Lessee under this Lease or any other agreement with Lessor or any other person; or (b) Lessee commits an act of bankruptcy, or any proceeding under the Bankruptcy Act is commenced by or against Lessee, or a receiver is appointed to take possession of any asset or property of Lessee or any unit of Equipment; or (c) Lessee makes a general assignment for the benefit of its creditors, or sells, transfers or disposes of all or substantially all of its assets or property, or merges with any other entity or engages in any form of corporate reorganization, without the prior written consent of Lessor; or (d) the financial statements furnished to Lessor by or on behalf of Lessee or any representations made by Lessee hereunder are incorrect, misleading or inaccurate.

\*Provided Lessee has not cured the event of default within the following periods: Ten (1) calendar days after written notice to Lessee of default for nonpayment of rent or fifteen (15) calendar days after written notice to Lessee for any other event of default, said notice specifying the covenant, condition or obligation under the Lease which Lessee has failed to perform which constitutes the event of default

**19. REMEDIES.** Upon occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessee shall be in default of the terms of this Lease and Lessor may exercise one or more of the following remedies: (a) take possession of any unit of Equipment without demand or notice and without court order or legal process. Taking possession of any or all of the Equipment by Lessor shall not be construed to be an election to terminate this Lease with respect to any unit of Equipment unless written notice to that effect is given to Lessee. Absent such written notice, this Lease shall remain in effect, and Lessee shall remain liable for all payments to be made hereunder. (b) Lease any unit of Equipment to such persons, at such a rental and for such a period of time (which may extend beyond the term of this Lease for such unit or units) as Lessor shall elect. (c) Sell the Equipment at a public or private sale for cash or on credit, without demand or notice to Lessee, Lessee hereby agreeing that the proceeds of such sale will exceed the reasonable rental value of the Equipment for the term of this Lease with respect thereto. Lessor shall apply the net proceeds (the proceeds of any renting or sale pursuant to this paragraph 19 minus all costs and expenses incurred with recovery, repair, storage, renting or sale) of any such rental to the payment of Lessee's obligations hereunder, Lessee remaining liable for any deficiency, which at Lessor's option, shall be paid monthly, as suffered, or immediately, or at the end of the term as damages for Lessee's default. (d) Terminate this Lease with respect to any or all units of Equipment and recover from Lessee the worth at the time of termination, of the excess, if any, of the amount of rent and charges equivalent to rent reserved in the Lease for the balance of the term or any shorter period of time over the then reasonable rental value of the Equipment for the same period. (e) In lieu of taking possession of the Equipment or terminating this Lease in whole or in part, declare the entire amount of rent accrued and to accrue over the unexpired portion of the term for any unit immediately due and payable. In such event, Lessee shall forthwith pay to Lessor the commuted value (at a discount rate of six percent (6%)) of such entire amount of rent plus any costs and expenses, as hereinafter provided, suffered by Lessor by reasons of Lessee's default. If, by reason of any separate default subsequent to Lessor's election of the remedy provided in this subparagraph, Lessor terminates this



Lease with respect thereto and takes possession of the Equipment, Lessor shall, at Lessor's option, either (1) refund to Lessee, or (2) set off against any sums due by Lessee to Lessor, or (3) hold as security for the performance of any obligations of Lessee to Lessor which may then be contingent or may become due, the full amount of any rent prepaid by Lessee pursuant to Lessor's election of the remedy provided in this subparagraph. (f) Terminate this Lease as to any or all units leased hereunder and recover from Lessee the net profit which Lessor would have realized from this transaction if Lessee had performed all of its obligations hereunder and such Lease had expired with respect to such unit or units on the expiration date referred to in the Schedule. (g) Bring legal action to recover all rents or other amounts then accrued or thereafter accruing from Lessee to Lessor under this Lease. (h) Pursue any other remedy which Lessor may have. Each of the foregoing remedies is cumulative and may be enforced separately or concurrently. In the event any action is brought to enforce the obligations or the rights of the parties hereunder, the prevailing party in such action will be entitled to all costs and expenses including attorneys' fees incurred therein.

**20. ASSIGNMENT BY LESSEE.** Lessee shall not assign, pledge or hypothecate this Lease in whole or in part, nor any interest therein, nor shall Lessee sublet or lend any unit of Equipment without the prior written consent of Lessor. Lessee's interest herein may not be assigned or transferred by operation of law. Consent to any of the foregoing acts shall not be deemed to be consent to any subsequent similar act.

**21. PERSONAL PROPERTY.** *The Equipment shall remain personal property regardless of whether it becomes affixed or attached to real property, or permanently rests upon any real property or any improvement thereon.* Lessee agrees to execute all such agreements and other documents, and to obtain the execution thereof, in recordable form, by all parties having an interest in any real property to which any of the Equipment is affixed, as Lessor may, from time to time, reasonably request, with respect to the identity of the Equipment as personal property, and Lessee further consents to the recordation of all such agreements and documents.

**22. ASSIGNMENT BY LESSOR.** Lessor may assign this Lease or mortgage the Equipment or both in whole or in part, with notice to Lessee. If Lessee is given notice of such assignment, it shall acknowledge receipt thereof in writing. Each such assignee or mortgagee shall have all of the rights, but none of the obligations, of Lessor under this Lease. Lessee shall not assert against assignee and/or mortgagee any defense, counterclaim or offset that Lessee may have against Lessor. Notwithstanding any such assignment, Lessor warrants that Lessee shall quietly enjoy use of the Equipment subject to the terms and conditions of this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

**23. OWNERSHIP BY LESSOR.** The Equipment is and shall at all times remain the sole and exclusive property of Lessor. Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease.

**24. HOLDING OVER.** Any use of the Equipment by Lessee beyond the term of this Lease with respect thereto shall be deemed an extension of the original lease term on a month-to-month basis, and all obligations of Lessee shall continue during such holding over. During any such holding over, Lessor may terminate this Lease and take possession of the Equipment upon demand after thirty (30) days' written notice to Lessee.

**25. NON-WAIVER.** No waiver of any Lessee's obligations, conditions or covenants shall be deemed to take place except such waiver that may be in writing and signed by Lessor. Failure to exercise such remedy which Lessor may have hereunder or any other acquiescence in the default of Lessee by Lessor shall not constitute a waiver of any obligation of Lessee including the obligation in which Lessee is in default; and Lessor shall be entitled to pursue any remedy available to it hereunder until Lessee has rendered complete performance of all obligations of any lease hereunder.

**26. FINANCIAL REPORTS.** Lessee shall furnish Lessor during the term hereof with annual financial statements within one hundred ~~twenty~~ <sup>reasonably</sup> ~~(120)~~ days after the end of its fiscal year and such other financial information as Lessor may from time to time request including, without limitation, reports filed with federal or state regulatory agencies. Lessee hereby warrants and represents that all financial statements heretofore and hereafter delivered to Lessor by or upon behalf of Lessee, and any statements and data submitted in writing to Lessor in connection with this Lease, are true and correct and fairly present the financial condition of Lessee for the periods involved.

**27. NOTICES.** All notices required or permitted under this Lease shall be sufficient if delivered personally or mailed to the party at the address set forth herein, or at such other address as either party may designate in writing from time to time. Any such notice shall be effective forty-eight (48) hours after it has been deposited in the United States mail, duly addressed, and postage prepaid.

**28. MISCELLANEOUS.** If there should be more than one person executing this Lease as Lessee, all obligations hereunder to be performed by Lessee shall be the joint and several liability of all such persons. Wherever the context permits, the Lessee's representations, warranties and covenants hereunder shall survive the delivery and return of the Equipment leased hereunder. Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective, to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No term or provision of this Lease may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the charge, waiver, discharge or termination is sought.

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ss.

On this 3rd day of August in the year one thousand nine hundred and 77, before me, Mary Margaret Shypertt a Notary Public, State of California, duly commissioned and sworn, personally appeared Charles A. Greenberg & Ronald E. Dean known to me to be the Vice Presidents of the corporation described in and that executed the within instrument, and also known to me to be the person...s... who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the California County of San Francisco the day and year in this certificate first above written.



Mary Margaret Shypertt  
Notary Public, State of California

The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. As used herein, the term "Lease" shall include all exhibits and schedules related thereto. This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of California, including all matters of construction, validity and performance. Time is of the essence hereof.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

LESSEE

Name BURLINGTON NORTHERN INC.

By Frank H. Coyne  
Title EXECUTIVE VICE PRESIDENT - FINANCE  
AND ADMINISTRATION

By D. C. Bunting  
Title Assistant Vice President, Finance & Planning

Attest: G. F. Schindler  
Asst. SECRETARY

Address: Burlington Northern Inc.

176 East Fifth Street

St. Paul, Minnesota 55101

ATTN: James E. Thompson

LESSOR

WELLS FARGO LEASING CORPORATION

By Charles A. Sully  
Title Vice President and General Counsel

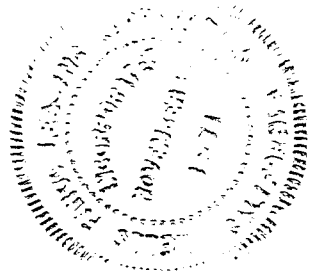
By James E. O'Connell  
Title VICE PRESIDENT

Attest: Frank Adams  
Assistant Secretary

Address: 425 California Street

San Francisco, California 94104

Attn: Contract Administration



WELLS FARGO LEASING CORPORATION

EQUIPMENT LEASE SCHEDULE NO. 01

This Equipment Lease Schedule is hereby incorporated in and made a part of that certain Equipment Lease Agreement ("Lease") dated August 3, 1977, Lease Number 3500246 between WELLS FARGO LEASING CORPORATION ("Lessor") and BURLINGTON NORTHERN INC. ("Lessee").

1. Equipment: Various units of railroad maintenance-of-way equipment mutually acceptable to Lessee and Lessor which units shall be specifically described on the Certificate of Acceptance pertaining thereto.
2. Location: Washington, Oregon, California, Idaho, Montana, Wyoming, Colorado, New Mexico, Texas, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, Missouri, Illinois and Kentucky.
3. Original Cost: Not to exceed \$2,500,000.00 including applicable sales, use or similar taxes, and any freight and handling charges.
4. Outside Delivery Date: If any unit of Equipment is not delivered to and accepted by Lessee on or before December 31, 1977, or there is a material adverse change in the financial condition of the Lessee prior to acceptance of the Equipment, then Lessor shall have no obligation whatsoever to lease such unit or units to Lessee.
5. Commitment Fee: If, for any reason, this Lease is not consummated then Lessee shall pay to Lessor on such date a commitment fee based on a reasonable calculation of Lessor's counsel's time, plus all reasonable and documented out-of-pocket costs. Such commitment fee shall not exceed \$12,000.00.
6. Rent: Lessee and Lessor agree that there shall be two Periodic Rent Commencement Dates of September 30, 1977 and December 30, 1977. For all Equipment delivered and accepted prior to September 30, 1977 the Periodic Rent Commencement Date shall be September 30, 1977. For all Equipment delivered and accepted prior to December 30, 1977 the Periodic Rent Commencement Date shall be December 30, 1977. Lessee shall make fourteen (14) consecutive semi-annual payments in arrears, payable commencing March 29, 1978 and June 29, 1978 respectively, each in a sum equal to 7.4212% of Original Cost.  
  
As additional rent, Lessee shall make an interim rental payment on the respective Periodic Rent Commencement Dates equal to .02849% of the Original Cost of each unit of Equipment accepted prior thereto multiplied by the number of days between acceptance thereof, as provided herein, and such Periodic Rent Commencement Date.

7. Lease Term: The lease term for the Equipment described herein expires eighty-four (84) months after the Periodic Rent Commencement Date.
8. Surrender: ~~For purpose of this Schedule 02 only,~~ The following is hereby added to and incorporated in paragraph 13 of the lease, captioned "Surrender": or (c) by delivering the Equipment at Lessee's sole cost and expense to any point on Lessee's tracks as may be designated by Lessor.
9. New Section 38 Property: Lessee hereby represents and warrants that each unit of Equipment referred to herein is new Section 38 property in Lessor's hands and each unit has an economic useful life in excess of 8-3/4 years after the Periodic Rent Commencement Date.
10. Lessee's Options Upon Expiration of the Lease Term: In lieu of surrendering the Equipment described herein upon expiration of the Lease, as set forth in Paragraph 13 thereof, provided the Lease has not been earlier terminated with respect to said Equipment and Lessee is not in default thereunder, Lessee may elect, by written notice delivered to Lessor not less than one hundred twenty (120) days prior to expiration of the Lease Term:
- (a) to purchase all, but not less than all, of the Equipment then subject to the Lease at a purchase price equal to the Fair Market Value (as defined herein) of said Equipment upon expiration of the Lease Term; or
- (b) to renew the Lease for all, but not less than all, of the Equipment at its Fair Rental Value (as defined herein) for two (2) successive annual periods, upon terms and conditions mutually agreeable to Lessor and Lessee. Lessee shall give Lessor one hundred twenty (120) days written notice of Lessee's intention to renew prior to the expiration of each renewal period.
- (c) In the event Lessee elects to exercise one of the foregoing options, then Fair Market Value or Fair Rental Value, respectively, of the Equipment at the end of the original or each renewal period, as the case may be, shall be determined on the basis of, and shall be equal in amount to the value which would obtain, in an arm's-length transaction between an informed and willing buyer or lessee and an informed and willing seller or lessor under no compulsion to sell or lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before sixty (60) days after Lessee has timely elected to renew the Lease or purchase the Equipment, Lessor and Lessee do not agree upon a determination of the Fair Market Value or Fair Rental Value of the Equipment, as the case may be, such value shall be determined in accordance with the foregoing definition by a qualified independent appraiser as

selected by mutual agreement between Lessor and Lessee, or failing such agreement, by a panel of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected. The appraisers shall be instructed to make such determination within a period of twenty (20) days following appointment, and shall promptly communicate such termination in writing to Lessor and Lessee. The determination so made by the sole appraiser or by a majority of the appraisers, if there is more than one, shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the appraiser(s) shall be borne by Lessee.

(d) Bill of Sale. If the Lessee elects to purchase the Equipment as provided herein upon payment of the purchase price, Lessor shall, upon request of Lessee, execute and deliver to Lessee or to Lessee's assignee or nominee, a Bill of Sale without representations or warranties, express or implied, except that such Equipment is free and clear of all claims, liens, security interests and other encumbrances by or in favor of a person claiming by, through or under Lessor for such Equipment, except liens and claims which Lessee assumed or is obligated to discharge under the terms of the Lease. Lessee agrees to pay or cause to be paid all sales and/or use taxes payable in connection with such sale, and any unpaid property taxes theretofore assessed or levied against said Equipment.

11. Care and Maintenance:

Lessee shall maintain and service each unit of Equipment in accordance with the manufacturer's maintenance specifications and recommendations for the intended use thereof. Each unit of Equipment shall be operated safely and carefully by properly trained, legally qualified persons and shall not be operated or used in a negligent, reckless, careless or abusive manner, or loaded beyond its maximum gross weight, load or axle limits, or without adequate oil pressure or coolant levels.

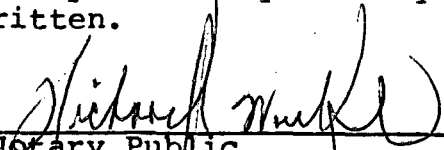
12. Recordation:

Lessee, at its own expense, will cause this Lease and any amendments or supplements hereto, and any assignments hereof, to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act, and Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will re-file, re-register, re-deposit or re-record whenever required) any and all further instruments, including Uniform Commercial Code financing and continuation statements, required by law or reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's interests in the Equipment, or for the purpose of carrying out the intention of and its rights under this Lease; and Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing and recording and an opinion of counsel for Lessee with respect thereto satisfactory to Lessor.

STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) ss

On this 24th day of August, 1977, before me personally appeared Frank H. Coyne and R. C. Burton, Jr., to me personally known, who, being by me duly sworn, say that they are the Executive Vice President-Finance and Administration and Assistant Vice President, Financial Planning of Burlington Northern Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in State of Minnesota, County of Ramsey the day and year in this certificate first above written.

  
\_\_\_\_\_  
Notary Public

XX  
X MINNESOTA X  
X NOTARY PUBLIC X  
X My Commission Expires Apr. 30, 1984 X  
XX

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO ) ss.

On this 3rd day of August in the year one thousand nine hundred and 77, before me, Mary Margaret Shypertt a Notary Public, State of California, duly commissioned and sworn, personally appeared Charles A. Greenberg & Ronald E. Dean known to me to be the Vice Presidents of the corporation described in and that executed the within instrument, and also known to me to be the person... who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the California County of San Francisco the day and year in this certificate first above written.



  
\_\_\_\_\_  
Notary Public, State of California

13. Special Conditions:

As a condition precedent to the performance of Lessor's obligations hereunder, Lessee shall execute, or cause to be executed and deliver to Lessor:

1. Such certificates of title and registration or applications therefore, manufacturer's statements of origin, dealer's report of sales, or other documents as Lessor may reasonably request from the vendor or manufacturers of the Equipment regarding registration and certification thereof under applicable law.
2. Opinion of Lessee's Counsel as to the matters set forth in paragraph 15 of the Lease captioned "Lessee's Representations."
3. Such other documents or instruments as Lessor may reasonably request.

LESSEE:

BURLINGTON NORTHERN INC.

By Frank H. Coym  
Title EXECUTIVE VICE PRESIDENT - FINANCE  
AND ADMINISTRATION

By R. C. Bentley  
Title Assistant Vice President,  
Financial Planning  
Attest: G. Steinbuhl  
ASST. SECRETARY

LESSOR:

WELLS FARGO LEASING CORPORATION

By Charles A. Guly  
Title Vice President and General Counsel

By Ronald E. Ows  
Title VICE PRESIDENT  
Attest: Frank Adams  
assistant secretary



# STIPULATED LOSS VALUE SCHEDULE

PAGE 1 OF 1

STIPULATED LOSS VALUE SCHEDULE  
 TO EQUIPMENT LEASE SCHEDULE NUMBER 001  
 TO EQUIPMENT LEASE AGREEMENT NUMBER 3500246, DATED 8/3/77  
 BETWEEN WELLS FARGO LEASING CORPORATION AND  
 BURLINGTON NORTHERN, INC.

FROM THE DUE DATE FOR RENTAL PAYMENT NUMBER: -----	UNTIL THE DUE DATE FOR RENTAL PAYMENT NUMBER: -----	THE STIPULATED LOSS VALUE AS A PERCENTAGE OF ORIGINAL COST FOR EACH UNIT OF EQUIPMENT IS: -----
*	1	105.431
1	2	100.725
2	3	95.803
3	4	90.666
4	5	85.312
5	6	79.743
6	7	73.958
7	8	67.957
8	9	61.741
9	10	55.308
10	11	48.660
11	12	41.797
12	13	34.717
13	14	27.422

\* FROM AND INCLUDING THE DATE THE CERTIFICATE OF  
 ACCEPTANCE IS EXECUTED FOR EACH UNIT OF EQUIPMENT.

THE STIPULATED LOSS VALUES SET FORTH ABOVE DO NOT TAKE  
 INTO ACCOUNT THE LOSS OF ANY INVESTMENT TAX CREDIT OR  
 DEPRECIATION DEDUCTIONS.